

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHARLES WILLIAMS, JR,

Plaintiff,

5:24-cv-721 (BKS/TWD)

v.

ERIC LEACH, ANDREW YOUNG
and MICHEAL MERKLEY,

Defendants.

Appearances:

Plaintiff pro se
Charles Williams, Jr.
Auburn, NY 13021

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Charles Williams, Jr. commenced this proceeding under 42 U.S.C. § 1983, and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 2). This matter was referred to United States Magistrate Judge Therese Wiley Dancks who, on July 8, 2024, granted Plaintiff’s application to proceed IFP, and issued a Report-Recommendation, recommending that Plaintiff’s complaint be accepted for filing to the extent it asserts claims of Excessive Force, in violation of the Fourth Amendment, against Defendants Leach and Young; and that the remaining claims asserted in the complaint be dismissed without prejudice and with leave to amend. (Dkt. No. 4). Magistrate Judge Dancks found that negligence is not cognizable as a federal claim under 42 U.S.C. § 1983, and that the complaint failed to identify which defendant or defendants conducted the allegedly unlawful search. (*Id.*) Plaintiff was informed that he had fourteen days within which to file written objections to the report under 28 U.S.C. § 636(b)(1), and that the failure to

object to the report within fourteen days would preclude appellate review. (*Id.* at 10-11). No objections to the Report-Recommendation have been filed.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. As Magistrate Judge Dancks found, negligence is not a viable federal claim under 42 U.S.C. § 1983. (Dkt. No. 4, at 8). To the extent Plaintiff seeks to include a negligence claim under state law, in addition to his claim for excessive force under the Fourth Amendment in violation of § 1983, Plaintiff must allege facts establishing that the defendant had a duty as to the Plaintiff, that the defendant breached that duty, and resulting injury to the Plaintiff. *Lloyd v. City of New York*, 246 F. Supp. 3d 704, 730–31 (S.D.N.Y. 2017). Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

ORDERED that Magistrate Judge Dancks’s Report-Recommendation (Dkt. No. 4) is **ADOPTED**; and it is further

ORDERED that Plaintiff’s complaint is **ACCEPTED** for filing to the extent it asserts claims of Excessive Force, in violation of the Fourth Amendment, under 42 U.S.C. § 1983 against Defendants Leach and Young; and it is further

ORDERED that except as to the foregoing, the remaining claims asserted in the complaint are **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND**; and it is further


ORDERED that any amended complaint must be filed **within thirty (30) days** of the date of this Order. Any amended complaint must be a complete pleading which will replace the current complaint in total; and it is further

ORDERED that if Plaintiff files a timely amended complaint, it shall be referred to Magistrate Judge Dancks for review; and if Plaintiff fails to file a timely amended complaint, the Clerk is directed to issue summons as to defendants Leach and Young, and issue a General Order 25; and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 25, 2024
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge